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HELLER EHRMAN WHITE & MCAULIFFE LLP  
275 MIDDLEFIELD RD  
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**OFFICE OF PETITIONS**

In re Application	:	
Ashkenazi, et al.	:	
Application No. 09/902,736	:	
Filed: July 10, 2001	:	DECISION ON PATENT TERM
Attorney Docket No. 39780-1618	:	ADJUSTMENT
P2C45	:	

This is a decision on the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT UNDER 37 C.F.R. § 1.705(b)," filed February 13, 2004, requesting correction of the patent term adjustment (PTA) indicated on the patent from one hundred fifteen (115) days to two hundred forty-two (242) days.

The application for patent term adjustment is **GRANTED** to the extent indicate herein.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is **two hundred forty (240) days**. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On December 10, 2003, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above identified application. The Notice stated that the patent term adjustment (PTA) to date is one hundred fifteen (115) days. On February 13, 2004, Applicants timely<sup>1</sup> submitted the instant application for patent term adjustment, asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is two hundred forty-two (242) days.

Applicants assert entitlement to a patent term adjustment of two hundred forty-two (242) days on the basis that the PTO improperly assessed Applicants a delay of one hundred twenty-five (125) days for filing a response to an Office action on September 29, 2003, when that response was a copy of a previous response filed on May 27, 2003. In addition, Applicants assert that the PTO improperly assessed Applicants a delay of two (2) days for filing the May 27, 2003 response, when a non-final Office action was mailed on February 25, 2003.

Applicants state that the patent issuing from the application is not subject to a terminal disclaimer.

The Office initially determined a patent term adjustment of one hundred fifteen (115) days based on an adjustment for PTO delay of one hundred sixty-eight (168) days pursuant to 35 U.S.C. 154(b)(1)(A)(i) and 37 C.F.R. § 1.703(a)(1) and seventy-four (74) days pursuant to 35 U.S.C. 154(b)(1)(A)(ii) and 37 C.F.R. § 1.703(a)(2), reduced by Applicants' delays of two (2) days pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. § 1.704(b) and one hundred twenty-five (125) days pursuant to 35 U.S.C. 154(b)(2)(C)(i) and 37 C.F.R. § 1.704(c)(8). The adjustments of 125 and 2 days are at issue.

A review of the application file reveals that the response filed on September 29, 2003, which included an amendment and an IDS, was in fact a copy of a response filed on May 27, 2003. In particular, the September 29, 2003 response included a USPTO date stamped postcard receipt, evidencing that the response was previously filed on May 27, 2003.

In view of the above, it is concluded that the amendment and IDS filed on September 29, 2003 were a copy of an amendment and IDS previously filed on May 27, 2003. As such, no applicant delay should have been assessed.

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<sup>1</sup> Applicants filed the application for patent term adjustment prior to the filing of the issue fee.

With respect to the two (2) days of applicant delay, pursuant to 35 U.S.C. 154(b)(2)(C)(ii) and 37 C.F.R. §1.704(b) an applicant has three months to respond to a notice from the Office. Here, the response was not filed until two (2) days after the three month period. Accordingly, the two (2) days of applicant delay was proper.

Accordingly, the correct determination of PTA at the time of mailing of the Notice of Allowance is **two hundred forty (240) days** (242 days of PTO delay, reduced by 2 days of applicant delay).

The \$200 fee set forth in 37 CFR 1.18(e) has been charged to Deposit Account No. 08-1641, as authorized.

The application file is being forwarded to the Office of Patent Publication for processing into a patent.

Telephone inquiries specific to this matter should be directed to Cliff Congo, Petitions Attorney, at (571)272-3207.

*Karin Ferriter*  
*per*

Karin Ferriter  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy